

VIRGIE HANCOCK
Claimant

WESCON CONTROLS
Respondent

UNITED STATES FIDELITY & GUARANTY CO.
Insurance Carrier

ISSUES

The Special Administrative Law Judge denied claimant's claim for permanent partial disability benefits and found claimant failed to prove her present condition was caused or aggravated by the alleged November 17, 1988, fall at work. Claimant requested review of that finding. Respondent requested review of its claim that the treatment provided to claimant was unreasonable and excessive. The issues now before the Appeals Board are:

- (1) Whether claimant's present condition was caused or aggravated by the alleged November 1988 accident.
- (2) Whether the Special Administrative Law Judge should have disallowed claimant's medical expense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award entered by the Special Administrative Law Judge should be modified to award claimant temporary total and medical benefits for the accident that claimant sustained on November 17, 1988, which resulted in temporary injury only.

- (1) Claimant contends that on November 17, 1988, she fell while working for the respondent and sustained severe injuries which rendered her unable to work. Respondent disagrees and contends that claimant's present disability is not compensable under the Workers Compensation Act.

Claimant presented the testimony of board-certified family practitioner William H. Mitchell, D.O., who treated claimant between September 1989 and February 1995. Dr. Mitchell testified that claimant sustained a severe injury to her atlantoaxial musculoskeletal system as a result of the November 1988 fall. When asked if that diagnosis was consistent with the type of accident claimant allegedly sustained, Dr. Mitchell stated, "I believe it would be a possibility, yes."

Claimant also presented the testimony of radiologist Ronald P. Levy, D.O., who interpreted x-rays of claimant's cervical spine taken in October 1993 and diagnosed rotatory subluxation of the atlantoaxial joint, a condition that the doctor testified was usually caused by some type of trauma.

Respondent presented the testimony of Robert A. Rawcliffe, Jr., M.D., who examined claimant in December 1989. During the clinical examination, Dr. Rawcliffe found normal muscle strength in all muscle groups and found no evidence of either atrophy or muscle spasm. The doctor obtained spinal x-rays which indicated a normal cervical lordotic curve and minimal degenerative changes of the cervical spine. The x-rays also included a normal thoracic spine and clinically insignificant, minimal lumbar scoliosis.

Dr. Rawcliffe indicated that certain of claimant's symptoms suggested symptom magnification and that he believes claimant's symptoms were due to psychological factors rather than physical injury. Dr. Rawcliffe testified that he disagreed with the diagnoses made by other doctors of peripheral neuritis, rotatory subluxation of the atlantoaxial joint,

and acute traumatic arthritis. In considering the diagnosis regarding the atlantoaxial joint, it appears Dr. Rawcliffe utilized x-ray views not utilized by those who made that diagnosis.

Respondent also presented the testimony of Philip R. Mills, M.D., who testified that he treated claimant between February and August 1989. Dr. Mills did not find claimant to have physical impairment.

Two other doctors also testified. Claimant deposed Jane K. Drazek, M.D., who is board certified in physical medicine and rehabilitation. Dr. Drazek last saw claimant in May 1994. By letter dated October 18, 1993, Dr. Drazek indicated that claimant sustained some trauma to the neck and was experiencing significant discomfort. However, the doctor also indicated the claimant had significant emotional or psychological factors which complicated the situation. Dr. Drazek recommended psychiatric evaluation.

Respondent deposed Ernest R. Schlachter, M.D., who evaluated claimant at the request of Administrative Law Judge David J. Jackson. Dr. Schlachter first examined claimant in February 1990. At that time, the doctor found neither subjective nor objective evidence of residual injury from the alleged accident and concluded that claimant sustained no injury. Dr. Schlachter examined claimant a second time in September 1993 at the request of Administrative Law Judge Shannon S. Krysl. Based upon that examination, Dr. Schlachter diagnosed a severe psychiatric disorder and again concluded that there was no evidence of orthopedic or neurological disease.

Based upon the entire record, the Appeals Board agrees with the Special Administrative Law Judge's analysis and conclusion that claimant failed to prove that she sustained permanent injury as a result of the alleged November 1988 accident. The Appeals Board finds Dr. Rawcliffe's testimony the most persuasive as he utilized x-ray views which others did not and which were critical to the diagnosis of atlantoaxial joint displacement. Also, the greater weight of the evidence indicates that claimant had normal muscle strength in all groups and no evidence of any atrophy which one would expect to be present if there were injury to the atlantoaxial joint. The Appeals Board finds that claimant's condition is psychological rather than physical and the evidence fails to establish that the psychological condition is directly traceable to the injury at work.

Based upon the above, the Appeals Board finds that claimant sustained temporary injury only as a result of the accident sustained on November 17, 1988.

(2) Respondent questions the reasonableness and necessity of the medical treatment and expense provided to and incurred by claimant. K.S.A. 44-510, as amended, provides that the Director of the Division of Workers Compensation shall determine all issues regarding excessive medical charges and unjustified treatment utilizing a peer review procedure. Insofar as we can determine from the file, that procedure has not been followed. Therefore, the Special Administrative Law Judge properly denied respondent's request for a determination that claimant's medical expense be totally disallowed. The respondent and insurance carrier may pursue reimbursement of medical expense by following the utilization and peer review procedure outlined in K.S.A. 44-510, as amended.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge Douglas F. Martin dated April 22, 1996, should be, and is hereby, modified; that claimant is entitled to temporary total disability benefits and medical treatment for the temporary injury sustained as a result of the November 17, 1988, accident.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Virgie L. Hancock, and against the respondent, Wescon Controls, and its insurance carrier, United States Fidelity & Guaranty Co., for an accidental injury which occurred November 17, 1988, and based upon an average weekly wage of \$198.26 for 40 weeks of temporary total disability compensation at the rate of \$132.18 per week for a total award of \$5,287.20.

As of September 30, 1996, there is due and owing claimant 40 weeks of temporary total disability compensation at the rate of \$132.18 per week for a total due and owing of \$5,287.20, which is ordered paid in one lump sum less any amounts previously paid.

The Appeals Board hereby adopts the order entered by the Special Administrative Law Judge regarding payment of expenses of administration of the Workers Compensation Act and all other orders as set forth in the Award that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William Cather, Wichita, KS
Kim R. Martens, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Douglas F. Martin, Special Administrative Law Judge
Philip S. Harness, Director